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MAY 16 2006

OFFICE OF PETITIONS

In re Application of
Bergan

Application No. 09/558,060

Filed: April 26, 2000

Attorney Docket No. 156-102

For: DATA CHECKER APPARATUS AND
METHOD

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:
: Decision on Petition for
: Patent Term Extension
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The above-identified application has been forwarded to the undersigned for consideration on the "Request For Reconsideration Of Patent Term Adjustment," which was received on March 14, 2006, for the above-identified application. See 35 U.S.C. § 154(b) and 37 C.F.R. § 1.701. Further requests or a request for reconsideration of this decision for patent term extension, must be filed under 37 CFR 1.182 or 37 CFR 1.183, and include the required fee.

The petition is dismissed.

Petitioner notes that the above-identified application was filed on April 26, 2000, a Final Office Action was mailed on November 18, 2004, a first Notice of Appeal was filed on February 18, 2004 and an Appeal Brief was filed on April 19, 2004, prosecution was reopened, Final Office Action was mailed on April 19, 2005, a second Notice of Appeal was filed on July 19, 2005 and a second Appeal Brief was filed on September 19, 2005, and the application was finally allowed on December 14, 2005. The application was allowed on December 14, 2005, but the Determination of Patent Term Extension under 35 U.S.C. 154(b) included with the Notice of Allowance in the above-identified application states that the patent term extension is zero (0) days. Petitioner asserts that patent term extension in this application is inappropriate and that the patent term should be extended by 303 days.

35 U.S.C. § 154(b)(as amended by the "Uruguay Round Agreements Act," enacted December 8, 1994, as part of Public Law 103-465) provides for patent term extension for appellate review, interference and secrecy order delays in applications filed on or after June 8, 1995 and before May 29, 2000.

35 U.S.C. § 154(b)(as amended by the "American Inventors Protection Act of 1999," enacted November 29, 1999, as part of Public Law 106-113) provides for patent term adjustment for these administrative delays and others in applications filed on or after May 29, 2000. The patent statute only permits extension of patent term based on very specific criteria. The Office has no authority to grant any extension or adjustment of the term due to administrative delays except as authorized by 35 U.S.C. § 154.

The above-identified application was filed on April 26, 2000, which is after June 8, 1995 and before May 29, 2000, and, as a result is an application that may be eligible for patent term extension under

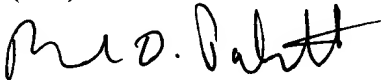
35 U.S.C. § 154. The application was not issued due to an adverse determination of patentability by the Board of Patent Appeals and Interferences (BPAI), was not delayed due to an interference proceeding, nor was it subject to a secrecy order, as a result, this application is not eligible for the extension under 35 U.S.C. 154 and 37 CFR 1.701. The Office has no authority to grant an extension of the term due to administrative delays except as authorized by 35 U.S.C. § 154.

While Petitioner asserts that it is inappropriate for the patent term not to be extended under the circumstance, both 35 U.S.C. 154(b)(2) and 37 CFR 1.701(a)(3) require a decision by the BPAI reversing an adverse determination of patentability for the patent application to be eligible for patent term extension under 35 U.S.C. § 154. Since, the application was not issued due to an adverse determination of patentability by the BPAI, the application is not entitled to patent term extension under 35 U.S.C. 154 and 37 CFR 1.701 and the petition is dismissed.

The delay in issuance of petitioner's application is regretted.

The Petition fee has been received.

Telephone inquiries with regard to this communication should be directed to Mark O. Polutta at (571) 272-7709.



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Office of Patent Legal Administration
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for Patent Examination Policy